

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2010-007

TO: John Engen, Mayor; City Council; Bruce Bender; Ginny Merriam, Communications Director; Marty Rehbein, City Clerk; Nikki Rogers, Senior Deputy City Clerk; Kelly Elam, City Clerk's Office; Erin Scott, Neighborhood Liaison; Ellen Buchanan, MRA Director; Chris Behan, MRA; Donna Gaukler, Parks & Recreation Director; Anne Guest, Parking Commission Director; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Doug Waters, Cemetery Director; Brentt Ramharter, Finance Director; Phil Smith, Bike-Ped Coordinator; Don Verrue, Building Division Superintendent; Mark Muir, Assistant Chief of Police; Mike Brady, Assistant Chief of Police

CC: Legal Staff

FROM: Jim Nugent

DATE March 24, 2010

RE: City government boards, committees and commissions are required to conduct deliberations in public pursuant to Montana's right to know and public participation open meeting constitutional statutes

FACTS:

Twice within the past 30 days city boards, committees or commissions have inquired about closing their meetings for so called executive session type discussions.

ISSUE:

May city boards, committees and commissions close their deliberations?

CONCLUSION:

Generally all deliberations of government bodies including municipal boards, committees and commissions must be conducted in public pursuant to Montana's right to know and public participation open meeting constitutional statutes.

LEGAL DISCUSSION:

Montana's constitutional right to know provision expressly establishes a right of citizens to observe the deliberations of all public bodies including boards, committees and commissions. Mont. Const. art. II, § 9 provides:

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. (Emphasis added.)

Local governments are political subdivisions of state government and all boards, committees and commissions are a public body of local municipal government.

Montana's open meeting laws, pursuant to Mont. Code Ann. § 2-3-201 provides:

2-3-201. Legislative intent -- liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed. (Emphasis added.)

Also see Mont. Const. art. II, § 8 which provides:

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

CONCLUSION:

Generally all deliberations of government bodies including municipal boards, committees and commissions must be conducted in public pursuant to Montana's right to know and public participation open meeting constitutional statutes.

OFFICE OF THE CITY ATTORNEY

Jim Nugent
City Attorney

JN:kmr